

No. 9/7/86-6Lab./3347.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s (i) Managing Director, Confed, Haryana, (ii) District Manager, Confed, Green Road, Rohtak:—

BEFORE SHRI B.P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 153 of 84

between

SHRI ZORAWAR SINGH, WORKMAN AND THE MANAGEMENT OF M/S. (I) MANAGING DIRECTOR, CONFED, HARYANA, (II) DISTRICT MANAGER, CONFED, GREEN ROAD, ROHTAK.

Present :—

Shri V.S. Singal, A.R. for the workman.

Shri M.C. Bhardwaj, A.R. for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between the workman Shri Zorawar Singh and the management of M/s (i) Managing Director, Confed, Haryana, (ii) District Manager, Confed, Green Road, Rohtak, to this Court, for adjudication,—vide Haryana Govt. Gazette Notification No. 32707—13, dated 30th August, 1984 :—

Whether the termination of services of Shri Zorawar Singh is justified and in order
If not, to what relief is he entitled ?

2. After receipt of the order of reference, notices were issued to the parties. The parties appeared. The case of the petitioner is that he was employed with the respondent as a Accounts Clerk since 11th March, 1981 but the respondent choose to terminate his services unlawfully w.e.f. 17th August, 1982, though his service record was blemishless and that before passing the order of termination the respondent did not comply with the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) and so, his termination was illegal and unlawful.

3. In the reply filed by the respondent, preliminary objections taken are that the present reference is bad in law and that this Court has no jurisdiction to try the same in view of the bar imposed by section 102 read with section 128 of the Haryana Co-operative Societies Act, 1984. It is further alleged that the respondent is not an "industry" as defined in section 2 (j) of the said Act. On merits, it is alleged that the petitioner was appointed purely on *ad hoc* basis for a period of six months and his services were terminated as per the stipulation in the letter of appointment.

4. On the pleadings of the parties, the following issues were settled for decision on 13th June, 1985 :—

- (1) Whether the respondent is not an "industry" as defined in section 2(j) of the I.D. Act, 1947 ? OPR.
- (2) Whether the reference is bad in law ? OPR.
- (3) Whether the claim of the workman is barred by limitation ?
- (4) Whether the termination of services of Shri Zorawar Singh is justified and in order ? If not, to what relief is he entitled ?

5. The petitioner himself appeared as WW-1 and the respondent examined MW-1 Shri Ram Dhan its Assistant Manager at Rohtak.

6. Heard.

Issue No. 1:

7. The term "industry" has been given the widest amplitude by the Hon'ble Supreme Court in its historic judgement reported in 1978 Lab. I.C. 467 Bangalore Water Supply and Sewerage Board v/s. A. Rajappa and others. So, viewed from the criteria laid down in this authority, the respondent is an "industry" as defined in section 2(j) of the said Act. So, this issue is answered against the respondent.

Issue No. 2:

8. I have already held,—*vide* my detailed order dated 23rd March, 1985 that the provisions of section 102 read with section 128 of the Haryana Co-operative Societies Act, 1984 do not bar the jurisdiction of this Court. So, there is no question of this reference being bad in law.

Issue No. 3:

9. No limitation has been prescribed for raising a demand notice in the Industrial Disputes Act, 1947.

Issue No. 4:

10. On behalf of the respondent Shri Bhardwaj forcefully contended that since the petitioner was appointed on *ad hoc* basis for a fixed period and his services were dispensed with in accordance with the stipulation given in the order of appointment, his termination cannot be said to be retrenchment as defined in section 2(co) of the said Act. In my opinion, this contention has no force. It is immaterial that the petitioner was employed for a fixed period on *ad hoc* basis. He continued to serve with the respondent as a Accounts Clerk for more than one year without any break, so, the petitioner had actually put in more than 240 days of actual work with the respondent during the last 12 calendar months from the date of his termination and as such, the respondent could not have terminated his services without complying the mandatory provisions of section 25F of the said Act, because his termination squarely falls within the ambit of term "retrenchment" as defined in section 2(co) of the said Act. Admittedly no compliance was made by the respondent with the provisions of section 25F of the said Act and as such, the order of termination is not sustainable being illegal and as such, the same is set aside. Since the demand notice was raised by the petitioner within less than two years of his termination, he cannot be denied the benefits of back wages also. So, the petitioner is ordered to be reinstated with continuity of service and full back wages. The reference is answered and returned accordingly with no order as to cost.

Dated 28th March, 1986.

B.P. JINDAL,
Presiding Officer,
Labour Court, Rohtak,
Camp Court, Hissar.

Endst. No. 153-84/540, dated 4th April, 1986.

For warded (four copies) to the Secretary to Government Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B.P. JINDAL,
Presiding Officer,
Labour Court, Rohtak,
Camp Court, Hissar.

The 21st May, 1986.

No. 9/7/86-6 Lab./3827.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of Haryana Warehousing Corporation, Sector 17, Chandigarh:—

BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 100 of 1983

between

SHRI HUKAM CHAND, WORKMAN AND THE MANAGEMENT OF HARYANA WAREHOUSING CORPORATION, SECTOR-17, CHANDIGARH

Present:

Shri Khushi Ram Bansal, A.R. for the workman.

Shri R.D. Jain, A.R. for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute, between the workman Shri Hukam Chand and the management of Haryana Warehousing Corporation, Sector 17, Chandigarh, to this Court, for adjudication,—*vide* Haryana Government Gazette Notification No. 31020-24, dated 30th June, 1983:—

Whether the termination of service of Shri Hukam Chand was justified and in order? If not, to what relief is he entitled?

2. After receipt of the order of reference, notices were issued to the parties. The parties appeared. The case of the petitioner is that he was employed with the respondent as a Godown Attendant cum-Watchman since 6th August, 1971 but the respondent choose to terminate his services unlawfully with effect from 1st December, 1982 and was given three months pay in lieu of notice and that while terminating his services the respondent did not comply with the mandatory provisions of section 25F of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act), because no retrenchment compensation was paid to him.

3. In the reply filed by the respondent, it is alleged that the services of the petitioner were terminated in terms of Regulation No. 10(2) of the respondent corporation, which govern the service conditions of all employees of the respondent corporation. It is further alleged that since the termination of services of the petitioner was brought about by an innocuous order, the petitioner cannot take any umbrage against the same. It is further alleged that the provisions of the Industrial Disputes Act, 1947 are not applicable to the respondent corporation.

4. On the pleadings of the parties, the following issues were settled for decision by me on 10th May, 1985 :—

- (1) whether the respondent is not an "industry" as defined in section 2(j) of the I.D. Act, 1947 ?
- (2) whether the petitioner is not a workman as defined in section 2 (s) of the I. D. Act, 1947 ?
- (3) whether the termination of service of Shri Hukam Chand was justified and in order ? If not, to what relief is he entitled ?

5. The petitioner himself appeared as WW-1 and the respondent examined Shri S. S. Negi its district manager at Rohtak as MW-1, MW-2 is Shri B. S. Siwach.

6. Heard.

7. **Issue No. 1.**—In view of the guide lines given in its historical judgement reported in 1978 Lab. I. C. 467 Bangalore Water Supply & Sewerage Board *versus* A. Rajappa and others, the Hon'ble Supreme Court of India has given widest amplitude to the terms of "industry" as defined in section 2(j) of the said Act. So, this issue was not rightly pressed on behalf of the respondent.

8. **Issue No. 2.**—The petitioner was employed simply as a Godown Attendant-cum-Chowkidar. So, he was performing the duties of a manual nature. So, his case squarely falls within the ambit of term "Workman" as defined in section 2(s) of the said Act.

9. **Issue No. 3.**—Though no plea was taken by the respondent in the reply filed in the Court that the petitioner was guilty of dereliction in his duties which led to the theft in the Godown under his charge, the entire oral evidence adduced by the respondent revolves around this fact. MW-1 Shri S. S. Negi stated that on 21st January, 1982 when he was posted as District Manager at Panipat he conducted the enquiry against the petitioner under orders Ex. M-1. The petitioner joined the enquiry proceedings and furnished his explanation also. His report is Ex. M-2. MW-1 Shri B. S. Siwach stated that there was charge of theft against the petitioner who was Incharge of the Godown at Jundla and that the petitioner was given a charge-sheet and availed of opportunity to defend himself during the enquiry proceedings. This part of the statement runs contrary to the version given by Shri Negi, who was examined MW-1. Shri Negi stated that no charge-sheet or list of witnesses were ever furnished to the petitioner. Though, the entire evidence regarding theft or a domestic probe against the same is beyond the pleadings of the respondent and the same cannot be taken into consideration. Simple case of the respondent is that the services of the petitioner were terminated in terms of the regulation number 10(2) governing service conditions of the employees of the respondent. It is also alleged in the same that since it was a order simpliciter of termination no stigma attaches to the petitioner. Though the order of termination is innocuously worded, this Court is entitled by to tear apart the veneer and look into the real import of the same. From the evidence on record, the respondent corporation left this Court in no doubt that services of the petitioner were terminated because he was suspended to have committed of theft of the grains lying in the godown of the respondent corporation at Jundla. Since no valid domestic probe was held, the respondent was not justified in terminating the services of the petitioner without complying with the provisions of section 25-F of the said Act, because his termination squarely falls within the ambit of the term "retrenchment" as defined in section 2(00) of the said Act. Admittedly no compliance was made by the respondent. Under these circumstances, order of termination cannot be sustained being violative of section 25-F of the said Act and as such the same is set aside. Since the demand notice was raised by the petitioner within less than 15 days of his termination, he cannot be denied the benefits of back wages. The petitioner is ordered to be reinstated with continuity of service and full back wages. The reference is answered and returned accordingly with no order as to costs.

Dated the 3rd April, 1986.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak.
Camp Court, Hissar.

Endorsement No. 100-83/585, dated 21st April, 1986

Forwarded (four copies) to the Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak,
Camp Court, Hissar.

The 26th May, 1986

No. 9/6/86-6Lab/4194.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Ambala, in respect of the dispute between the workman and the management of M/s Engineering and Consultants, 200, H.M.T., Ancillary Unit, Panchkula (Ambala).

IN THE COURT OF SHRI V.P. CHAUDHARY, PRESIDING OFFICER, LABOUR COURT, AMBALA

Ref. No. 30 of 1985

SHRI DARSHAN SINGH WORKMAN AND THE MANAGEMENT OF THE MESSRS ENGINEERING AND CONSULTANTS, 200, H.M.T., ANCILIARY UNIT, PANCHKULA (AMBALA).

Presents—

Shri Abhey Singh, for workman.
Shri R. L. Chopra, for respondent.

AWARD

The Hon'ble Governor of Haryana in the exercise of powers conferred.—vide clause (C) of sub-section (i) of section 10 of the Industrial Disputes Act, 1947 referred dispute between Shri Darshan Singh and Messrs Engineering and Consultants 200 HMT Panchkula to this Court. The terms of the reference are as under:—

“Whether termination of services of Shri Darshan Singh, workman, is justified and in order, if not to what relief is he entitled?”

Darshan Singh workman through his statement of claim alleged that he had been working in the respondent concerned as a Dentman for the last five years. His services were terminated by the respondent management on 26th June 1984 without assigning him any reason and no termination letter was handed over to him. Workman alleged that he used to take active part in the trade union activities and also used to mobilise workers to take interest in the activities of trade union, the Management felt annoyed with him and terminated his services in a most illegal manner. The matter was taken up before the Labour-cum-conciliation officer, Ambala but this dispute could not be resolved hence, the reference is.

Respondent-management contested the reference contending that this statement of claim has no value in the eyes of law because it is all together different then the demand notice. Management contended that the true facts of the case are that on 25th June, 1984 Shri Darshan Singh approached the management that on account of his domestic circumstances. He would not be in a position to continue to work in the employment of respondent, so his resignation was accepted. His wages bonus, leaves and other dues were paid amounting to Rs. 1243.70. It was further contended that workman voluntarily resigned from his job and before the Conciliation Officer. The workman never turned up so it was contended that this demand notice and statement of claim which have been filed by Shri Abhey Singh have no truth and are incorrect.

On behalf of the workman Shri Abhey Singh filed replication and controverted the assertions made by the respondent-management in the written statement.

On the pleadings of the parties the following issues were framed:

Issues:

1. Whether termination order dated 26th June, 1984 is justified and correct, if so its effect? OPM
2. Whether claim statement is at variance with demand Notice. if so its effect? OPM
3. Relief.

I have heard Shri Abhey Singh for workman and Shri R.L. Chopra for respondent-management and have perused the oral and documentary evidence placed on the file. My issue-wise findings are as under:—

Issue No. 1 :

In support of this issue management examined Shri Dinesh Kumar Arora who stated that workman was in the employment of respondent management. He stated that he has brought records pertaining to respondent management, according to that workman appeared in the office of management on 25th June 1984 and resigned orally on this oral resignation the dues of the workman were worked out which came to Rs. 1243-70 and thereafter payment of this amount was made to him. Photo State Copy of the same is Ex-M-1, Thereafter, workman appeared on 29th June, 1984 submitted an application Ex-M-2 for experience certificate. In cross examination this witness stated that on the complaint of Shri Darshan Singh the police never came in the factory premises and no enquiry was made from him.

Management also tendered into evidence Ex-M-3 which is a decision of Conciliation Officer which reads that the workman did not join in person re-conciliation proceedings. Shri Abhey Singh was asked to produce the workman but the workman failed to do so.

Shri Darshan Singh appeared in the witness box as AW-1. He stated that on 26th June, 1984 he was retrenched. He further stated that he never resigned. He further stated that the management was unhappy with him because he used to take active part in the activities of union. In cross-examination Shri Darshan Singh stated that demand notice present on the file was never filed by him. Nor it bears his signatures. Thereafter, Shri Abhey Singh gave a signal to the workman and then the workman admitted that the demand notice belonged to him. He also stated that he never signed claim statement. He admitted this fact that he never appeared before the Conciliation Officer.

In view of the above evidence it is clear that the workman himself resigned from his job which has become clear from the evidence on the file. Firstly, I would like to refer Ex-M-2. An application written by Shri Darshan Singh in his own pen which bears his signature. This application reads that Shri Abhey Singh has got written an application from him against the management which has been submitted to the police. This application further reads that Shri Abhey Singh has mis-guided him and under threat he got written complaint against the management. This application further reads that the workman does not want any action on that application.

The alleged demand notice was put to workman but he did not admit that it was got prepared, signed and was got filed by him.

The claim statement and the replication both have been signed by Shri Abhey Singh and not by the workman himself.

Ex-M-3 order passed by Conciliation Officer reads that workman did not appear and take part in the Conciliation proceedings. Shri Abhey Singh had been appearing before him.

Statement of Shri Dinesh Kumar Arora clearly reads that workman himself appeared in the office of the management and voluntarily submitted that his family circumstances no longer permit him to continue in the service of respondent-management, so his dues were worked out and payment of the same was made,—vide Ex-M-1 and thereafter workman Darshan Singh was relieved from his job.

So the above facts as well as the evidence which has been adduced on the file makes the whole picture clear that it is he himself who voluntarily quit the job. The case of the workman that his services were dispensed with is not at all convincing. In the case in hand it is a matter of great regret that the workman had been silent throughout and it is Shri Abhey Singh who had been taking active part in this litigation before Conciliation Officer as well as in this Court. So this issue is decided in favour of management and against the workman.

Issue No. 2 :

In the demand notice the A.R. of workman has mentioned that services of Darshan Singh have been terminated by the management in a most arbitrary manner when workman came in the witness box the demand notice was put to him, the workman refused to own it.

The demand notice does not disclose the reason of termination of services of workman while there is an improvement in the claim statement it has been filed by Shri Abhey Singh which reads that workman used to take active part in the union activities, so the management was displeased with him and on that very account services of Darshan Singh were terminated by the management. But the evidence of the management is otherwise it reads that it is the workman himself who abandoned his job.

So from the bare readings of demand notice and claim statement it has become clear that both the documents are at variance with each other, so both are not tenable in the eyes of law, hence rejected. So this issue is also decided in favour of management and against the workman.

Issue No. 3 Relief :

For the foregoing reasons on the basis of my issue-wise findings I pass award regarding the controversy between the parties accordingly.

Dated , the 8th April, 1986.

V. P. CHAUDHARY,
Presiding Officer,
Labour Court, Ambala.

Endst. No. 1109, dated the 8th April, 1986.

Forwarded (four copies), to the Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under Section 15 of I. D. Act, 1947.

V. P. CHAUDHARY,
Presiding Officer,
Labour Court, Ambala City.